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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES

Special process on missing persons in the territory of the former Yugoslavia

Report submitted by Mr. Manfred Nowak, expert member of the Working Group on Enforced or Involuntary Disappearances, responsible for the special process, pursuant to paragraph 4 of Commission resolution 1995/35

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Introduction

1. As a result of armed conflicts and the "ethnic cleansing" policy, the number of missing persons in the territory of the former Yugoslavia again increased during the year 1995. In Bosnia and Herzegovina the fate of more than 27,000 persons, mainly Bosnians of Muslim origin, remains unknown. Subsequent to the Bosnian Serb seizure of Srebrenica, some 8,000 Bosnians of Muslim origin are reported missing, the majority of whom could be presumed to have been victims of mass execution. It is further reported that 725 Bosnian Serbs and 834 Bosnian Croats are missing. In Croatia, although some 200 cases were clarified there are still more than 2,800 persons missing as a result of the armed conflict between the Croatian forces and the Yugoslav National Army in 1991. It is reported that subsequent to the operations "Flash" and "Storm" launched by the Croatian Army, more than 100 persons have disappeared. It is feared that the great majority of missing persons are buried in more than 300 suspected mass graves in Croatia and Bosnia and Herzegovina.

2. With the signing of the Basic Agreement on Eastern Slavonia on 12 November 1995 in Erdut and the Dayton Peace Agreement on Bosnia and Herzegovina on 14 December 1995 in Paris as well as with the establishment, by the Security Council, of the United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium (UNTAES) and the multinational implementation force (IFOR) there is for the first time since the outbreak of the armed conflict in 1991 the sincere hope that a lasting peace can be achieved. In both agreements, respect for human rights plays an important role. Respect for human rights means on the one hand the prevention of future human rights violations and on the other hand the investigation of past human rights violations, the prosecution of the perpetrators of crimes against humanity, and the clarification of cases of some 30,000 missing persons.

3. The special process dealing with missing persons in the territory of the former Yugoslavia was established by the Commission on Human Rights in 1994 as a joint mandate of the expert, in his capacity as member of the Working Group on Enforced or Involuntary Disappearances, and the Special Rapporteur on the situation of human rights in the territory of the former Yugoslavia (resolutions 1994/39 and 1994/72). In accordance with the expert's recommendation contained in his first report (E/CN.4/1995/37), the Commission, in resolution 1995/35, transformed the special process into an independent mandate entrusted to the expert.

4. The present report covers the expert's activities during the period under review and analyses the situation of missing persons in Croatia, Bosnia and Herzegovina and the former Yugoslav Republic of Macedonia on the basis of individual cases the special process has received and transmitted as well as information provided by Governments, non-governmental organizations, relatives of missing persons and other sources. Particular emphasis has been given to the possibilities of tracing missing persons in compliance with the provisions of the Basic Agreement on Eastern Slavonia and the Dayton Peace Agreement on Bosnia and Herzegovina, on the burning issue of mass graves and the efforts of the expert to establish a multilateral commission on missing persons. The report concludes with a number of specific recommendations on how to determine in a more efficient manner the fate and the whereabouts of some 30,000 missing persons in the territory of the former Yugoslavia.

I. MANDATE AND METHODS OF WORK

5. Subsequent to the expert's report to the Commission at its fifty-first session, and owing to the importance of the issue of missing persons in the territory of the former Yugoslavia, the Commission on Human Rights adopted resolution 1995/35 entitled "Special process dealing with the problem of missing persons in the territory of the former Yugoslavia" in which it requested the expert to continue his efforts with a view to determining the fate of the thousands of missing persons and relieving the suffering of their families. The special process is the first mandate established by the Commission on Human Rights which is of both a country-specific and a thematic character.

6. The expert decided that the special process would continue its previous methods of work, i.e. those of the Working Group on Enforced or Involuntary Disappearances, adapted to the specific situation of the former Yugoslavia (see E/CN.4/1995/37). In this context, the special process continues to be of a strictly humanitarian nature, functioning as the channel of information between the sources reporting the missing persons and those allegedly held responsible, or who may be in the position to provide information concerning the fate of those reported missing. The task of the special process terminates when the whereabouts of the missing persons are located and confirmed by the source. The special process is not mandated to involve itself in determining the accountability of the forces reported by the source as perpetrators.

7. The special process keeps the source confidential whenever it is an individual, a family member or a relative. The non-governmental organizations reporting cases of missing persons are kept confidential upon request. Sources are requested to provide certain minimum information including the name and surname of the victim, date and place of disappearance, and forces allegedly held responsible, in order for the special process to consider and transmit the case.

8. With respect to the situation in the former Yugoslavia and the break up of one country into several States, the mandate of the special process also covers disappearances which occurred during international armed conflicts, regardless of whether the victim was a combatant or a civilian. Hence, the expert decided, as of the establishment of the special process in 1994, to use the broader term "missing" rather than "disappeared". Owing to the specificity of the political situation in the former Yugoslavia, and the existence of de facto authorities fighting the government forces inside the recognized borders of a State and therefore allegedly responsible for a number of reported cases of missing persons, the expert had to deal with these de facto authorities without implying any official recognition by the United Nations in order for the special process to function efficiently.

II. ACTIVITIES OF THE EXPERT

A. Consultations

9. During the period under review, the expert held regular consultations with the representatives of the Governments of Croatia and Bosnia and

Herzegovina, with representatives of various non-governmental organizations and intergovernmental organizations, the media and others who might provide information on the fate and whereabouts of missing persons in the former Yugoslavia. The cooperation between the special process and other United Nations entities and the International Committee of the Red Cross (ICRC), which was established in 1994, continued on a regular basis. During his visit to Croatia and Bosnia and Herzegovina in early 1996, the expert for the first time received support and cooperation from the local Serb authorities in Eastern Slavonia and high-level representatives of the Republika Srpska.

10. The continuing effort of the expert to establish dialogue and a relationship based on cooperation with the Federal Republic of Yugoslavia (Serbia and Montenegro) have, however, not yet met with success. Although the Government has at least accepted responsibility only for the cases of missing persons which occurred during the armed conflict in 1991 between the Yugoslav National Army and the Croatian forces, it did not respond to any of the 1,041 cases which were transmitted by the expert to that Government during the years 1995 and 1996. Neither did it respond to any of the requests for information regarding missing persons in Bosnia and Herzegovina. Moreover, the Government of the Federal Republic of Yugoslavia never honoured the expert's various requests to conduct a mission to that country.

11. Initially, the Federal Republic of Yugoslavia's explanation for its uncooperativeness was that the special process was a joint mandate with that of the Special Rapporteur on the situation of human rights in the territory of the former Yugoslavia (E/CN.4/1995/37, para. 15). In this respect, the expert, after consultations with the Special Rapporteur, decided to submit his report directly to the Commission on Human Rights. Nevertheless during 1995, the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) persisted in non-cooperation and in a letter dated 9 February 1995, reacted strongly to the expert's report. The Commission, in paragraph 3 of its resolution 1995/35, urged the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) to allow the expert "to visit Belgrade in order to discuss concrete aspects of cooperation, and to undertake maximum efforts to cooperate by disclosing all relevant available information and documentation in order finally to determine the fate of the thousands of missing persons and to alleviate the suffering of their relatives". Moreover, the General Assembly at its fiftieth session adopted resolution 50/193, in paragraph 22 of which it urged "all parties, in particular the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro), to cooperate with the special process on missing persons in the territory of the former Yugoslavia ... by disclosing information and documentation on inmates in prisons, camps and other places of detention". The expert deeply regrets the attitude of the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro).

12. The expert can carry out his difficult mandate efficiently only if he receives the full support and cooperation of all Governments involved. As has been stressed repeatedly, and as clearly follows from the relevant resolutions of the Commission on Human Rights as well as the methods of work, the special process is of a strictly humanitarian nature aimed only at assisting all families, regardless of their ethnic origin, in their efforts to establish the

fate and whereabouts of their missing relatives. In the spirit of the Basic Agreement on Eastern Slavonia and the Dayton Peace Agreement on Bosnia and Herzegovina, the expert once again requests the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) to change its position, to invite him to visit Belgrade, to provide him with all relevant information and to support his initiative to establish a multilateral commission on missing persons.

B. Visits

13. The expert, together with a staff member of the Centre for Human Rights, conducted a mission to Croatia and Bosnia and Herzegovina from 27 January to 4 February 1996. The main objectives of the mission were to continue his cooperation with all Governments and non-governmental organizations, to establish a dialogue and cooperative relations with the Bosnian Serb authorities and representatives of the local Serbs in Eastern Slavonia, to achieve proper protection of alleged mass graves and to propose to all parties, in the aftermath of war and in the process of the implementation of peace, the establishment of a multilateral commission with a view to determining the fate of the missing persons throughout the former Yugoslavia.

14. In Croatia, the expert held meetings with the Deputy Prime Minister, the Deputy President of the Parliament and the President of the State Commission on Missing Persons as well as with Croatian and Serb non-governmental organizations dealing with missing persons. He also travelled to Eastern Slavonia, where he met with officials of UNTAES and the local Serbian Commission of Exchange of Prisoners and Missing Persons, and visited the mass grave in Ovcara which was discovered in 1992.

15. In Bosnia and Herzegovina, the expert held meetings in Sarajevo with the representative of the Prime Minister and the President of the State Commission on Exchange of Prisoners and Missing Persons. He also established contacts and discussed the issue of missing persons with IFOR officials and the Organization for Security and Cooperation in Europe (OSCE).

16. Moreover, the expert met with the President of the Parliament and Ministers of the Republika Srpska in Pale, with whom he established relations based on cooperation. In the territory of the Republika Srpska, he also travelled to Srebrenica and Banja Luka where he met with both mayors, and to the region of Prijedor where he visited suspected mass graves in the iron mines of Ljubija and Tomasica. In Bratunac, he visited two sites of mass graves in Glogova reportedly containing the victims of the fall of Srebrenica to Bosnian Serb control in July 1995.

17. In the Federation of Bosnia and Herzegovina, the expert visited Mostar, Livno, Bugojno and Jajce. He met with family members of missing Bosnian Croats and persons of Muslim origin, with the Presidents of the Bosnian Croat Commission for the Exchange of Prisoners and Missing Persons and the Muslim Commission for Exchange of Prisoners and Missing Persons, and with the Mayor of Jajce. In Bare (near Jajce) he participated in the excavation of a burial site which was conducted by Bosnian Croats. In both countries the expert held meetings with the representatives of the Office of the United Nations High Commissioner for Refugees (UNHCR), ICRC and the United Nations Civil Affairs.

18. The expert wishes to thank the Governments and officials of the Republic of Croatia, the Republic of Bosnia and Herzegovina, the Republika Srpska and the Federation of Bosnia and Herzegovina for their availability and hospitality, their cooperation and their readiness to participate on a multilateral commission on missing persons as proposed by the expert. He also extends his thanks to IFOR for its assistance during his mission to the regions of Banja Luka and Prijedor, to the United Nations Civil Affairs for its logistical assistance and to the human rights officers of all field offices of the Centre for Human Rights.

C. Communications relating to individual cases of missing persons

19. During his field visits, the expert received allegations and lists concerning a total of more than 30,000 missing persons in the territory of the former Yugoslavia.

20. During his mission to the Republic of Croatia in 1994, the expert was provided with a list of 2,764 missing persons which he transmitted to the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) in the same year. The special process received 1,282 cases through Croatian non-governmental organizations of which 1,063 contained the required information and were considered, processed and transmitted to the authorities allegedly held responsible. Sources were informed of those cases not complying with the criteria of the special process (e.g. the subject was reported dead) and asked for further information on those lacking the minimum required information. The Government of Croatia communicated to the special process information received from the Croatian Commission on Missing Persons and Detainees concerning nine of these cases whose "mortal remains were taken over and identified". In each case, the source was informed and given a period of six months to comment, refute or confirm the information. Since no observation was received during this period, in accordance with the methods of work of the special process, these cases were considered clarified.

21. Eleven of these cases concerned ethnic Serbs who reportedly were detained in 1991 by Croatian forces and whose whereabouts remain unknown. Therefore, these cases were transmitted to the Government of Croatia which responded that the Croatian authorities had initiated investigations with a view to determining their fate. No further communication was received on this matter, and therefore as of the date of writing their whereabouts remain unknown. Subsequent to operation "Storm", the special process received 48 cases of missing persons who were allegedly detained by Croatian forces during and after the operation. These cases were transmitted to the Government of Croatia under the urgent action procedure, requesting it to initiate investigations to determine the fate of the victims. During his mission to the Republic of Croatia in early 1996, the expert received from a non-governmental organization a list of 92 missing Serbs who disappeared during and after operation "Storm".

22. It is reported that a total of some 27,000 persons are missing in Bosnia and Herzegovina. The Bosnian State Commission of Exchange of Prisoners and Missing Persons presented a tabulated list of 24,742 missing persons while the Bosnian Croat Commission of Exchange of Prisoners and Missing Persons list comprises 834 missing persons. However, owing to the existing problems and

difficulties of the war situation in the Republic of Bosnia and Herzegovina, family members were not always in a position to report their missing persons directly to the special process. Most of the individual cases of missing persons were reported to the Centre for Human Rights field offices in Bosnia and Herzegovina. These cases were submitted by the family members or relatives of missing persons. Moreover, a number of cases were reported by Croatian non-governmental organizations. All the cases providing the required information were considered and transmitted to the authorities allegedly responsible. However, the special process did not receive any communications concerning these victims' whereabouts. Subsequent to the seizure of Srebrenica and Zepa by the Bosnian Serb forces and the disappearance of thousands of persons, the expert, in a letter to the Bosnian Serb de facto authorities expressed his intention in August 1995 to travel immediately to Srebrenica and Zepa and to visit the detention camps in that region. The Bosnian Serb de facto authorities did not reply to this letter either.

23. However, during his mission to Bosnia and Herzegovina from 31 January to 3 February 1996, consequent on his meeting in Pale with the representatives of the Republika Srpska, the expert travelled to Srebrenica and visited, inter alia, the football stadium, the former headquarters of the United Nations Protection Force (UNPROFOR) in Potocari as well as two alleged sites of mass graves in Glogova (near Bratunac). At a later date, the expert, escorted by IFOR, visited the mines of Ljubija and Tomasica (in the region of Prijedor) which are, according to reports, locations of two alleged mass graves.

24. In January 1996, two cases of disappearances were transmitted under the urgent action procedure to the Government of the former Yugoslav Republic of Macedonia. One case concerned the driver of the President of the political party VMRO-DPMNE (Democratic Party for Macedonian National Unity) who was arrested by the police in Skopje. The second case concerned a person who was arrested by the police in Ohrid. The Government provided information on these two cases which the special process will communicate to the sources.

III. SITUATION OF MISSING PERSONS IN CROATIA

A. Armed Conflict in 1991

25. A total of 1,041 individual cases considered by the special process, of which 640 were transmitted in 1995 to the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro), were related to the armed conflict between, on the one hand, the Croatian forces and, on the other hand, the Yugoslav National Army (JNA) and Serb paramilitary groups such as Arkan's "Tigers", Seselj's "White Eagles" and Martic's forces. The armed confrontation between the two communities of Serbs and Croats living in Croatia started in early March 1991 when Pakrac (ex-Sector West) fell under Serb control. On 3 May 1991 the JNA intervened in Borovo Selo (Sector East) and afterwards took an active role in the conflict. In July 1991, after tense fighting in East Slavonia, Erdut, Dalj and Aljmas were captured by the Serb paramilitary groups and the JNA. The city of Vukovar became, as of August 1991, the target of heavy shellings and attacks of the JNA and the Serb paramilitary groups, namely the "Tigers" and the "White Eagles". On 18 November 1991, after 86 days of resistance and heavy fighting, the Croatian National Guard in Vukovar finally surrendered.

26. The 640 cases were received from the Association of Families of Imprisoned and Missing Defenders of Croatia and transmitted in 1995 to the authorities allegedly responsible. For most of the cases the families explained the situation in which the victim had disappeared. These descriptions give an overall view of the situation between July 1991 and February 1992, the period during which the reported cases occurred, with the exception of three cases which were reported to have occurred in May 1992, July 1992 and September 1992 respectively. However, the majority of the cases occurred between August and November 1991, during the culminating period of the conflict.

27. The majority of the victims were men and civilians, roughly 14 per cent of the reported cases being women. In only 30 cases was it mentioned that the victims were members of the Croatian Army or paramilitary forces. The men were mainly young or middle-aged who were, allegedly, detained in order to prevent them from fighting, and also to use them for forced labour. The ages ranged from 17 to 70 years. The victims comprised mainly Croats. A total of 28 Serbs, Hungarians, Ruthenians, Ukranians, Slovenians, Czechs and Gypsies have also been reported missing. Similarly to the cases considered in 1994, the majority of the missing persons (55 per cent) reported disappeared from United Nations Protected Area (UNPA) East, and in particular from Vukovar and its hospital. When the city of Vukovar fell, the JNA and the paramilitary forces captured the hospital. It is, however, reported that the director of the hospital and the commander of the JNA had agreed to evacuate the Croatian patients to Croatian-held territory. Nevertheless, on 20 November 1991, only women, children and the elderly were transported to Croatian-held territory. The other patients were, allegedly, transferred to the JNA barracks, and their whereabouts remain unknown.

28. It is further reported that on 18 November 1991 the JNA entered the Evangelical Church in Vukovar, forced all the worshippers out and gathered them in the "Velepromet" fairground. Women, children and the elderly were separated from men of military age. The men stayed behind and no information on their fate has been disclosed, while the others were transported in buses to Sid (Serbia). Moreover, 32 persons were reported missing from the town of Borovo Naselje who were, allegedly, taken to the Federal Republic of Yugoslavia (Serbia and Montenegro). Missing persons were reported from other localities of the UNPA East including Bogdanovci, Berak, Sotin, Erdut and Aljmas.

29. Cases of missing persons reported from the former UNPA North constituted 27 per cent of the considered cases the majority of which were reported to have occurred in Glina and Petrinja, Hrvatska Kostajnica and Slunj.

30. Former UNPA South accounted for 4.7 per cent of the considered cases. Cases of missing persons which occurred in this sector were mainly from the localities of Zaton, Gospic, Gracac and Zadar.

31. Cases of missing persons were also reported to have occurred in the former Sector West, constituting 3.6 per cent of the considered cases. The majority of these persons disappeared from localities such as Bosanska Gradiska, Pakrac, Daruvar and Dezanovac.

32. Missing persons who disappeared in Croatian-held territory are 3.5 per cent of the total number of considered cases. It is reported that a Slovenian, who was reported by the source to be a "marine saboteur" in the Croatian Navy, disappeared during an attack against the JNA marine forces in Dubrovnik. Two Croatians who disappeared from Hum-Vocin were, reportedly, shown on Belgrade television. Ethnic Serbs were reported missing from this region and detained by the Croatian forces. Their cases were transmitted to the Government of Croatia with a view to determining their fate.

33. No exact information is available on the whereabouts of the missing persons. However, in some cases witnesses testified having seen the victims after their arrest or abduction. According to these testimonies, which the expert had no means to verify, the majority of the victims from UNPA East were, allegedly, either transported to Ovcara (near Vukovar) or transferred to Sremska Mitrovica, Aleksinac and Nis in Serbia to undertake forced labour. A number of the victims from former UNPA North were, allegedly, first detained in Glina detention centre, Petrinja prison, Knin prison or transferred to Manjaca detention camp in Bosnia and Herzegovina. It is reported that the victims from former UNPA South were mainly taken to the "Marko Oreskovic" factory in Licki Osik (UNPA South) or the Licki Osik cinema which were used as detention centres, and the missing persons from former UNPA West were, allegedly, either detained in Bucje camp or sent to "Bojceta" farm labour camp.

34. In October 1992 the Ovcara (Sector East) mass grave was discovered by forensic physicians and the existence of other mass graves in Sectors East and West were confirmed by international monitors. In this respect, the expert fears that a considerable number of the persons who were transported to Ovcara and many others of those reported missing were victims of summary executions.

35. The expert undertook a mission to Eastern Slavonia on 30 January 1996, and visited Vukovar and the mass grave site in Ovcara. In recent years this site has been under constant guard by the United Nations forces. The commander of the United Nations observation post established for the sole purpose of guarding the site assured the expert that there had never been any attempt to open to otherwise disturb the mass grave.

36. Subsequent to operation "Storm" the Croatian authorities located 51 suspected mass graves. In the former Sector North 26 mass graves were identified of which 10 were excavated. Monitors of the European Union and other international organizations were only present during part of the excavations. According to the Croatian State Commission for Tracing Missing Persons and Detainees, until the present a total of 135 bodies had been exhumed of which 110 could be identified. From the two mass graves near Petrinja (50 km south of Zagreb) which were discovered and excavated, 39 bodies were exhumed of which 17 were soldiers while the 22 others were civilians who were allegedly killed in September 1991 by the JNA and Serb paramilitary groups when the latter took control of the town. Moreover, it is said that 21 bodies of elderly civilians and one soldier were exhumed from another grave discovered in the vicinity of the former JNA barracks outside Petrinja. It is further reported that 24 bodies were exhumed in Saborsko and 18 in Pakrac. However, owing to the advanced stage of decomposition, it is very difficult to identify the bodies, particularly in the case of soldiers

who were about the same age and wore the same uniforms. During their meeting in Zagreb on 29 January 1996, the President of the Croatian Commission for Tracing Missing Persons and Detainees gave the expert a list of 112 cases of missing Croats whose fate was determined after operations "Flash" in May 1995 and "Storm" in August 1995.

37. The joint commission for the questions of missing persons, refugees and displaced persons, established on 12 February 1994, did not meet during the period under review. However, the Governments of the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro) decided to deal with the issue of missing persons at the level of a working group. The working group's first meeting was on 15 February 1995 in Belgrade, followed by a meeting on 13 April in Zagreb. The third meeting was held on 22 June 1995 in Belgrade. However, representatives of the Federal Republic of Yugoslavia (Serbia and Montenegro) did not attend the meeting which was convened on 18 August 1995 in Zagreb and, subsequently the working group ceased functioning. The outcome of the working group's meetings was that the Yugoslav authorities provided information according to which 24 persons listed as missing were alive and either living in the Federal Republic of Yugoslavia (Serbia and Montenegro) or in the UNPAs, and undertook the obligation to provide death certificates for 82 identified dead bodies from Vukovar. Pursuant to this agreement 66 death certificates were presented but, could not be considered as legal documents because they were incomplete. Consequently, the whereabouts of these 66 persons remain unknown. The Yugoslav authorities also delivered the mortal remains of 11 persons of which 7 were identified, and therefore the cases of these persons were considered clarified.

B. Operations "Flash" and "Storm"

38. Recent cases of disappearances reported to the special process occurred mainly during and after the Croatian offensive operations "Flash" and "Storm" which were launched to capture the Serb-held territories (UNPAs West, South and North) within the internationally recognized frontiers of Croatia.

39. Operation "Flash" started on 1 May 1995 in western Slavonia and lasted for four days. Despite the Cessation of Hostilities Agreement between the warring parties which was negotiated by the United Nations on 3 May 1995, the fighting continued till 4 May 1995 when in late afternoon the Croatian Serb forces surrendered. It is reported that some 1,300 Croatian Serb males were transferred to detention centres in Varazdin, Pozega and Bjelovar for interrogation, and the fate of many of them remains unknown. It is further reported that some 8,000 civilians, mainly women, children and the elderly, fled the fighting and sought refuge in Bosnia and Herzegovina, Banja Luka, Nova Topola and Dubica. Consequently, the majority of families were separated, some of their members leaving and the others remaining or detained. The same day the President of the Security Council issued a statement expressing deep concern at reports that the human rights of the Serb population of western Slavonia were being violated.

40. Operation "Storm" was launched on 4 August 1995. The offensive lasted for four days, and according to reports human rights abuses and violations of fundamental freedoms of civilians were committed by the Croatian Army. It was also reported that Serb men were separated from the elderly, women and

children and taken away by Croatian officials for interrogation; the whereabouts of many of them remain unknown. It was further reported that soldiers systematically looted and burned houses in localities they captured. As one witness stated after the fall of the city of Knin on 5 August 1995, "sectors of the city were ablaze and [there were] dead bodies in the streets". Consequently, local ethnic Serbs felt their security to be at stake and thousands fled to north and west Bosnia and Herzegovina and to the Federal Republic of Yugoslavia (Serbia and Montenegro). It is estimated that 95 per cent of the population of Sectors South and North (i.e. around 200,000 persons) left their home towns, while some thousands were reported blocked in their villages owing to the constant shelling of the roads and attacks by Croatian troops. This situation also resulted in the separation of families, some members leaving and others staying behind, each trying to determine the others' fate.

41. International observers who assessed human rights abuses committed in Sectors South and North, discovered hundreds of dead bodies in over 20 villages, and have reported the existence of mass graves in both sectors. Therefore, the expert fears that a number of the persons reported missing might be victims of these killings. The expert expressed his concern to the Government of the Republic of Croatia.

42. The 48 cases reported to the special process following the Croatian offensive operation "Storm" consisted of Serbs and persons of Muslim origin. The majority were men. However, a two-month-old baby was reported missing with both his parents. Persons of Serb origin are reported to have disappeared during the assault, namely during 4 to 6 August 1995, mainly from localities in Sector North such as Dvor, Glina and Pakovac. A number of them are said to have disappeared on the highway on their way to Serbia. The cases comprised civilians as well as combatants, members of Serb paramilitary formations. Many of these combatants have, allegedly, disappeared since their surrender to the Croatian Army. A considerable number of cases of missing persons concerned elderly and invalid persons who stayed in their villages rather than flee the Croatian troops.

43. The persons of Muslim origin reported missing were all among those who sought refuge in the refugee camp of Kuplensko in Sector North subsequent to the defeat of Abdic's forces and the recapturing of Velika Kladusa (Bosnia and Herzegovina) by the Bosnian Army. The dates of the disappearances of these persons varied between late August and late September 1995. An agreement was signed on 8 August 1995 between the Governments of Croatia, Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina to repatriate refugees within 24 hours. Sources fear that these missing persons were subjected to measures taken by the Croatian authorities in accordance with that agreement.

44. According to the sources, in the village of Mogoric, near Gospic (120 km south of Zagreb), a number of civilians were, allegedly, detained in a collective centre in the elementary school. The Croatian police have denied access to the centre and the detainees, and therefore since that date the whereabouts of the detainees remain unknown.

45. During the expert's visit to Croatia in February 1996, the Government provided information on the whereabouts of only six of those missing persons. In compliance with the methods of work of the special process, this information will be forwarded to the sources for either their confirmation or refutation. The expert also received a list of 92 persons who went missing during or after operation "Storm". Furthermore, there are allegations of some 200 cases of missing persons subsequent to operation "Flash".

C. Basic Agreement on Eastern Slavonia

46. On 12 November 1995, after a period of intense diplomatic activity, the Government of the Republic of Croatia and the local Serb community signed the Basic Agreement on the region of Eastern Slavonia, Baranja and Western Sirmium in which they requested the Security Council to establish, for a period of 12 months, a transitional administration to govern the region, assist in the demilitarization, ensure that it was possible for the refugees and displaced persons to return, organize elections and facilitate the return of the former UNPA East to Croatian control. Paragraph 6 of the Basic Agreement states that the highest levels of internationally recognized human rights and fundamental freedoms shall be respected in the region. Paragraph 11 envisages the establishment of an international commission to monitor human rights in the region.

47. On 15 January 1996, in its resolution 1037 (1996), the Security Council decided to establish a new peace-keeping operation, with both military and civilian components, under the name United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium (UNTAES). The Secretary-General appointed the American diplomat and air force general Jacques Klein as the Transitional Administrator with the overall authority over the civilian and military components of UNTAES. According to paragraph 3 of the resolution, the demilitarization of the region, as provided in the Basic Agreement, shall be completed within 30 days from the date the Secretary-General informs the Council, based on the assessment of the Transitional Administrator, that the military component of UNTAES has been deployed and would be ready to undertake its mission. It is expected that the demilitarization would be completed by April or May 1996. In paragraph 21, the Security Council stressed that "UNTAES shall cooperate with the International Tribunal [for the former Yugoslavia] in the performance of its mandate, including with regard to the protection of the sites identified by the Prosecutor". This provision refers, above all, to the mass grave in Ovcara which the Prosecutor needs to excavate on order to secure evidence in relation to his indictment, on 9 November 1995, of three senior officers of the Yugoslav National Army suspected of the mass killing of 261 captive non-Serb victims who were taken away from Vukovar hospital on 20 November 1991 and have been missing ever since. According to information received from various sources, it is not to be excluded that other missing persons from the region are also buried in the Ovcara mass grave which has been guarded by United Nations forces. The expert, therefore, agreed with the Prosecutor of the International Criminal Tribunal to cooperate in the excavation of the mass grave with a view to exhuming and identifying all the existing mortal remains therein.

48. On 17 November 1995, the Ministers of Foreign Affairs of the Republic of Croatia and the Federal Republic of Yugoslavia signed in Dayton, Ohio, an agreement on cooperation in tracing missing persons as an auxiliary agreement to the Dayton Peace Agreement; however, this agreement must still be ratified by both parties. According to the agreement the parties undertake to exchange, without delay, complete and precise information about missing persons and to set up a joint commission for the tracing of missing persons. The commission established under the agreement held its first meeting on 7 December 1995 in Zagreb. The second meeting, which was scheduled for 3 January 1996 in Belgrade, was postponed by the Yugoslav authorities to 25 January. According to information received from the Croatian authorities, the results of the two meetings were far from satisfactory.

IV. SITUATION OF MISSING PERSONS IN BOSNIA AND HERZEGOVINA

A. General

49. The phenomenon of missing persons is one of the many calamities resulting from the armed conflict and "ethnic cleansing" in Bosnia and Herzegovina. According to various sources, the total number of missing persons in Bosnia and Herzegovina is some 27,000. The Bosnian State Commission for Exchange of Prisoners and Missing Persons presented in January 1996 a list of 24,742 persons of Muslim origin who have gone missing since the outbreak of the armed conflict between the Bosnian Government and the Bosnian Serb de facto authorities in 1992 of whom some 17,000 were reported missing during the same year. Furthermore, 2,145 Bosnians of Muslim origin were reported missing as a result of the armed conflict with Croatian forces in 1993. It is further reported that 725 Bosnian Serbs and 834 Bosnian Croats are missing. Only in relatively few cases did the special process receive sufficiently detailed information on individual cases to register and transmit them individually in accordance with its methods of work and required criteria. Consequently, the majority of cases were submitted in tabulated lists.

B. Armed conflict between the Government of Bosnia and Herzegovina and the Bosnian Serb de facto authorities

50. Subsequent to the declaration of independence of the Republic of Bosnia and Herzegovina on 3 March 1992, the Serbian Democratic party proclaimed on 27 March 1992 the Serbian Republic of Bosnia and Herzegovina. Throughout the month of March 1992, there were clashes between the communities in Sarajevo. As from 7 April 1992, when Sarajevo came under intense artillery fire by the JNA, the war broke out all over the country. It is reported that between May and July 1992 thousands of civilians of Muslim origin were, allegedly, killed while thousands more were detained in concentration camps and a considerable number deported from western Bosnia and Herzegovina. By the end of summer 1992 some 40,000 Muslims had, allegedly, been killed in eastern Bosnia and Herzegovina. According to the Government's record, the majority of those whose whereabouts remain unknown are civilians who were mainly abducted from home and only 17 were soldiers or combatants who were captured during the fighting. People were reported missing specifically from the area of Sarajevo (i.e. Vogosca, Ilijas, Hadzici, Ilidza, Ahatovici), Podrinje (i.e. Foca, Visegrad, Zvornik, Bratunac), east Herzegovina (i.e. Kalinovik),

Bosanska Krajina (i.e. Kozarac, Prijedor, Klujuc, Sanski Most, Kotor Varos, Skender Vakuf, Jajce) and Semerija (i.e. Derventa, Bijeljina, Brcko, Bosanski Brod, Modrica).

51. Most of the individual cases of missing persons which were transmitted during 1995 to the Bosnian Serb authorities occurred during the period March to September 1992. It is reported, for example, that more than 160 persons were allegedly abducted from Travnik (north of Sarajevo) on the same date and transported to Grabovica (north-west of Sarajevo) where they were detained in the elementary school. The majority of these cases concerned Muslim men. The age range was between 23 and 75 with the exception of one 12-year-old boy. Only a few women and ethnic Croats were reported missing. The JNA and various Serb paramilitary groups such as the "White Eagles", Jadranko's groups and the "Tigers" were mentioned by the sources as responsible for these disappearances.

52. It is reported that on 19 June 1992 the Serb paramilitary group in Rogatica (east of Sarajevo) separated Muslim men and women and took the men to the "Slandara" factory near Rogatica. It was further reported that in May 1992 the Bosnian Serb forces looted and destroyed houses in Hadzici (Sarajevo suburbs) and abducted people. The latter were last seen detained in a garage which was used as a prison for the circumstances. A number of the missing persons are said to have been taken to detention centres in Knin (former Sector South). According to the sources, a number of the missing persons were deported to Serbia to the detention camp in the Vranje. Among the missing women, some were reported to have been seen undertaking forced labour near Visegrad (east of Sarajevo). Many of the persons missing from Prijedor and hundreds abducted from Trnoplje were later seen in the Omarska detention centre, and are suspected to have been transferred to the Federal Republic of Yugoslavia (Serbia and Montenegro) to undertake forced labour in the Aleksinac mines. In September 1995, mass graves were discovered near Krasulje in northwest Bosnia and Herzegovina. The Government has exhumed 540 bodies of persons who were presumably detained at Manjaca concentration camp in 1992. In January 1996, a mass grave containing 27 bodies of Bosnian Muslims was discovered near Sanski Most; the victims were reportedly killed in July 1992 during their transfer from Sanski Most to Manjaca concentration camp (near Banja Luka). It is further reported that other mass graves exist, for example in Kasindolska (near Sarajevo), Novoseoci (near Rogatica), Trnoplje, Keraterm and Omarska, as well as in the iron mines of Ljubija and Tomasica near Prijedor.

53. It is reported that the surviving victims were either detained in prisons such as Mali Logor in Banja Luka, in Hadzici, the primary school in Modrica, Borike near Rogatica, Vlasenica prison, in Doboj, or transferred to detention camps in the Federal Republic of Yugoslavia (Serbia and Montenegro) such as Mitrovo Polje (Uzice area) and Banja Koviljaca, and to army barracks in Belgrade and Nilsic and Tivat in Montenegro. Furthermore, the State Commission on Exchange of Prisoners has identified prisons and detention centres under the Government's control in Sarajevo, Zenica, Tarcin, Tuzla, Bihac, Vares and Travnik.

54. During the meeting with the expert, the President of the Bosnian Serb Commission on Exchange of Prisoners and Missing Persons stated that

1,500 Bosnian Serbs were missing from Sarajevo, the majority of them from central Bosnia and Herzegovina. Moreover, he stated that the whereabouts of 140 Bosnian Serb combatants abducted from Bosnia and Herzegovina and transferred to Croatia remain unknown.

C. Armed conflict between the Government of Bosnia and Herzegovina and the Bosnian Croat de facto authorities

55. Many disappearances occurred in the context of the armed conflict between the Bosnian Croat forces and the government army. Tension between the two communities intensified in April 1993, and on 15 April 1993 fierce fighting broke out. Towns such as Zenica, Vitez, Konjic, Kiseljak and Jablinca were constantly shelled, and houses were looted and burned and a number of mosques were destroyed. According to reliable sources, civilians were victims of systematic violations of human rights. In May 1993, sporadic fighting was concentrated in Mostar and the surrounding area. It is reported that the Bosnian Croats were determined to have Mostar as the capital of the self-proclaimed Republic of Herzeg-Bosna and therefore were forcing out civilians of Muslim origin. A blockade was reportedly imposed on the 55,000 Muslims remaining in the eastern part (Muslim sector) of the city and the population forced to live in conditions of extreme deprivation, especially of food and medicine. According to United Nations officials, in May 1993 some 200 civilians of Muslim origin were detained by Bosnian Croat forces in and around Mostar. On 26 June 1993, the Bosnian Croats and the Bosnian Serbs launched a joint attack on a number of towns in central Bosnia and Herzegovina including Maglaj, Zepce and Zavidovici. On 31 August 1993 the Bosnian Croats released 450 prisoners held at detention centres near Medjugorje, and in September 1993, a Bosnian Croat official admitted that the living conditions of some 4,000 Bosnian Muslims who had been detained in June and July 1993 and were being held in three centres near Medjugorje were poor and did not comply with the provisions of international humanitarian law.

56. The President of the Security Council in his statement of 3 February 1994, expressed the commitment of the Security Council to "consider serious measures if the Republic of Croatia fails to put an immediate end to all forms of interference in the Republic of Bosnia and Herzegovina". Subsequently, the Government and the Bosnian Croat forces signed on 23 February 1994 a general cease-fire agreement which took effect one day later. On 18 March 1994, representatives of the Governments of Bosnia and Herzegovina and the Republic of Croatia signed the Washington Accord on the creation of the Federation of Bosnia and Herzegovina between the Government of Bosnia and Herzegovina and the Bosnian Croats. As a result, on 19 March 1994, 857 prisoners were exchanged, of whom 500 were Muslim detainees who had been held by the Bosnian Croats at a camp near Mostar and 357 were Bosnian Croats held by the Bosnian Army in detention centres near Bugojno and eastern Mostar. However, the fate of 26 Bosnian Croats who were, allegedly, transferred in November 1993 from the "Stadion" detention centre in Bugojno to an unknown destination, remains undetermined. Moreover, the whereabouts of some 120 Bosnian Muslims who were detained in a school in Prozor also remain unknown. On 3 November 1994 the Bosnian Army and the Bosnian Croat forces regained control of the town of Kupres in central Bosnia and Herzegovina where they discovered and excavated one mass grave. A total of 37 bodies were exhumed of which 34 were identified. However, the fate of 855 Bosnians of

Muslim origin comprising 281 soldiers of the Bosnian Army and 574 civilians, of whom 261 were from Mostar and the others from localities such as Capljina, Stolac, Tomislavgrad, Neum and Travnik, remains undetermined. The whereabouts of 662 Bosnian Croats (combatants and civilians) from Mostar also remain unknown.

57. During his recent mission, the expert met in Mostar and Livno with family members of Bosnian missing persons of Muslim origin as well as with the relatives of the missing Bosnian Croats from Bugojno. The expert also participated in the excavation of a burial site in Bare (near Jajce).

58. Thirteen cases concerned male combatants of Muslim origin between 23 and 30 years old, who were captured by the Bosnian Croat forces on 10 May 1993 at the Bosnian Army headquarters in the city of Mostar located in the former Civil Engineering "Vranica" building. They were seen in October 1993 at the Bosnian Croat detention centre, in the cellar of the Mostar school of mechanical engineering, and their whereabouts are unknown since then. It is also reported that the capture was filmed and shown on the Croatian television programme "A Picture by a Picture". In a letter dated 5 December 1995, the office of the President of the Federation replied that "the question about the fate of persons enlisted in your letter will be solved within the complete exchange of prisoners and dead bodies in accordance with the agreements reached in Dayton."

59. Three cases concerned one Bosnian Serb and two Bosnians of Muslim origin who were taken away from their homes (in Mostar west) by Bosnian Croat forces. The Federation authorities have not yet communicated any information on their whereabouts.

60. One case concerned the former Vice-President of the Federal Parliament of the former Socialist Federal Republic of Yugoslavia, member of the Party for Democratic Action (SDA) and member of the Parliament of the Republic of Bosnia and Herzegovina, who was, allegedly, detained in June 1993 by Bosnian Croat forces (HVO 111th brigade) in the town Zepce in central Bosnia and Herzegovina. It is further reported that he was later handed over to the Bosnian Serb forces and was reportedly detained in one of the detention centres near Doboj. His name was on the list of persons to be exchanged on 24 December 1995. Sources confirmed his release.

D. Srebrenica and Zepa

61. In July 1995 the United Nations safe areas were attacked and seized by Bosnian Serb forces, and thousands of persons were reported missing. It is estimated that some 5,000 persons fled Srebrenica before it fell under Bosnian Serb control and the whereabouts of more than 3,000 persons were separated from their families by the Bosnian Serb forces during and after the attack remain unknown. However, owing to the lack of a coordinated survey, it is impossible for the time being to know the exact number of missing persons.

62. The Security Council in its resolution 819 (1993) of 16 April 1993 declared "Srebrenica and its surroundings as a safe area which should be free from any armed attack or any other hostile act". By Security Council resolution 824 (1993), Sarajevo, Tuzla, Gorazde, Zepa and Bihac were also declared safe areas.

63. Nevertheless, the Bosnian Serb forces attack on Srebrenica started on 6 July 1995 and on 11 July 1995 the city fell under Bosnian Serb control. It is reported that as the Bosnian Serb forces moved into the city, the inhabitants of Srebrenica sought refuge in Potocari, 5 km north of Srebrenica, where the UNPROFOR compound was situated. Potocari was also seized on 12 July 1995. Bosnian Serb forces transported women, children and the elderly to the confrontation line west of Srebrenica from where these people had to walk 6 Km to reach Kladanj in government-held territory. Military-age and able men of between 15 and 70 were allegedly either taken to Bratunac or assembled in the football stadium at Nova Kasaba. It is reported that more than 100 men were taken to Konjevic Polje. On 13 July 1995, a medical convoy transporting wounded civilians was allegedly stopped by the Bosnian Serb forces who took 30 persons out of the convoy whose whereabouts remain unknown. According to the displaced persons' testimonies, civilians were subjected to summary executions and more than 2,000 men who had surrendered in the village of Kravica were shot in groups of 5 to 10. Moreover, dead bodies were seen in Potocari, and on the way between Bratunac and Konjevic Polje. A number of women unaccounted for were reportedly prevented from travelling to government-held territory.

64. These allegations of mass executions were followed by the discovery of mass graves in various localities. Aerial photographs taken by the United States Government show in Nova Kasaba two areas of "disturbed earth" one measuring 100 metres by 50 metres and the other 100 metres square. Other aerial photographs show three areas of "disturbed earth" in the vicinity of Karakaj. There are also strong indications of the existence of other mass graves near Cerska, Burnice and Bratunac. On 1 February 1996, the expert visited two of these sites in Glogova, near Bratunac.

65. Regrettably, a number of the persons reported missing from the region must, therefore, be presumed to have been victims of mass executions. According to the displaced persons' testimonies, missing persons also could have been sent to undertake forced labour or detained for eventual exchange of prisoners. According to reliable sources, the Bosnian Serb forces as well as paramilitary groups such as the Drina Wolves, Seselj Militia, Specialna Policia, "White Eagles", "Tigers" and Krajina Serbs were the main units conducting the fighting and responsible for the expulsion of civilians from Srebrenica and the subsequent massacres.

66. With regard to Zepa, which fell under Bosnian Serb control on 25 July 1995, the Bosnian Serb forces, foreign mercenaries (i.e. Russians and Greeks) and the above-mentioned paramilitary groups are said to have been involved in the seizure of the town. It is reported that women, children and the elderly were evacuated in buses bearing license plates of the Federal Republic of Yugoslavia, while the men were kept behind. Some 1,500 men were reported to have fled with their families to the surrounding woods. It is also said that a number of men who fled joined the Bosnian Government Army. As in Srebrenica, there is no exact number of missing persons from Zepa, but it is estimated to be less than that of Srebrenica.

E. Efforts of the Central Commission

67. All warring parties signed on 31 December 1994 a four-month cease-fire agreement. In compliance with point 8 of this agreement the parties engaged to work continuously and simultaneously on processes for the early release of persons detained in relation with the conflict, as well as for the provision and cross-checking of all available information on persons unaccounted for. The first meeting of the Central Commission set up under the agreement was held at Sarajevo Airport on 12 January 1995, and as a result 100 prisoners were released, 50 by the Bosnian Government and 50 by the Bosnian Serb de facto authorities. By 11 April 1995, the Central Commission had met six times. However, owing to the lack of cooperation of all parties the Commission has not, thus far, produced the expected results. Even though the agreement had expired and the fighting had resumed, the Commission held its eleventh meeting on 27 September 1995 at Sarajevo Airport with representatives of Bosnian Government and the Bosnian Serb de facto authorities. The Bosnian Croats were not present. As a result of the meeting, an exchange of prisoners took place on 29 September 1995 near Tuzla at the Satorovici front line; 103 detainees were released by the Bosnian Serb de facto authorities and the Bosnian Government released 66 detainees.

68. It is expected that in the framework of the Dayton Agreement the Central Commission will continue its efforts to release all detainees and to locate the fate of all persons unaccounted for. In this respect, initially 900 persons from the three sides who were to be released were registered by the ICRC. On 24 December 1995 the Bosnian Government and the Bosnian Serb de facto authorities exchanged prisoners at Sanski Most. It is reported that the Government released 10 Bosnian Serb soldiers in exchange for the member of the Parliament of the Republic of Bosnia and Herzegovina. Moreover, on the same day 244 other persons were released at the separation line between the Government-held territory and the Bosnian Serb-held territory near Gracanica in central Bosnia and Herzegovina. The exchange comprised 130 Bosnian Muslims and 114 Bosnian Serbs who had, reportedly, been detained in prisons in Zenica, Travnik and Tuzla. On 10 January 1996, a number of Bosnian Muslims who had been detained in Banja Luka and Manjaca were exchanged for 30 Bosnian Serb soldiers at the separation line near Sanski Most. However, the exchange of prisoners which, according to the Dayton Agreement, had to be terminated by 19 January 1996 is still continuing. To date, some 800 prisoners have been exchanged and released by the three parties. Of the remaining 100 registered persons, roughly 50 per cent are suspected of war crimes and the three parties refuse to release such persons before conducting investigations on their cases. In February 1996, the ICRC discovered 88 Bosnian Serbs held in detention by the government authorities in Tuzla. On 15 February 1996, 11 of them were released. As at 16 February 1996, some 100 prisoners have yet to be released.

F. The Dayton Agreement

69. During the period 1 to 20 November 1995, negotiations to reach a peaceful settlement to the conflict in Bosnia and Herzegovina were held, under the auspices of the Contact Group, at Wright-Patterson Air Force Base in Dayton, Ohio. On 20 November 1995, the Presidents of the Republics of Bosnia and Herzegovina, Croatia and Serbia agreed on the terms of a General Framework

Agreement and a total of 12 annexes thereto. On 14 December 1995 the Dayton Peace Agreement was officially signed in Paris and entered into force upon signature. The General Framework Agreement for Peace in Bosnia and Herzegovina was signed by the Presidents of the Republics of Bosnia and Herzegovina, Croatia and Serbia, and the three parties welcomed and endorsed the arrangements made in the annexes. Article VII of the General Framework Agreement explicitly recognizes that the observance of human rights and the protection of refugees and displaced persons are of vital importance in achieving a lasting peace. Annex 6 (Agreement on human rights) and annex 7 (Agreement on refugees and displaced persons) were signed by the President of the Republic of Bosnia and Herzegovina, and representatives of its two entities, the Federation of Bosnia and Herzegovina and the Republika Srpska. According to article I of annex 6, the parties shall secure to all persons within their jurisdiction the highest level of internationally recognized human rights and fundamental freedoms, above all those provided in the European Convention on Human Rights and its Additional Protocols. By virtue of article II, paragraph 2, of annex 4 (Constitution of Bosnia and Herzegovina), the rights set forth in the European Convention shall apply directly in Bosnia and Herzegovina and have priority over all other law. Annex 6 foresees the establishment by the parties of a Commission on Human Rights comprising an Ombudsman and a Human Rights Chamber which is authorized, inter alia, to decide on individual complaints. Moreover, in compliance with the provisions of annex 7, a Commission for Displaced Persons and Refugees is to be established to decide on claims for the return of real property.

70. Annex 7, article V, refers to the problem of missing persons and states that the parties shall provide information through the tracing mechanisms of the ICRC on all persons unaccounted for and cooperate fully with the ICRC in its efforts to determine the identities, whereabouts and fate of those unaccounted for. In compliance with this provision, the ICRC has established a working group of experts comprising representatives of the parties and the High Representative, as well as a number of observers. Moreover, the parties, in accordance with annex 6, article XIII, will invite the United Nations Commission on Human Rights and other competent international human rights monitoring mechanisms to monitor closely the human rights situation in Bosnia and Herzegovina. They agree to provide these mechanisms fully and effectively with the necessary facilities, assistance and access. The mandates of the Special Rapporteur on the situation of human rights in the territory of the former Yugoslavia and the special process dealing with missing persons in the territory of the former Yugoslavia established by the Commission on Human Rights, respectively, in 1992 and 1994 are typical examples of specialized human rights monitoring mechanisms complying with this provision.

71. While international implementation of the military aspects of the Dayton Peace Agreement is entrusted to IFOR composed of ground, air and maritime units from the North Atlantic Treaty Organization (NATO) and non-NATO nations (annex 1-A), the coordination of all civilian aspects of the Peace Agreement as well as the liaison with IFOR are entrusted to the High Representative (annex 10). At the Peace Implementation Conference held in London on 8 and 9 December 1995, the former Swedish Prime Minister and European Union special negotiator, Mr. Carl Bildt, was appointed High Representative. In its resolution 1031 (1995) of 15 December 1995, the Security Council, acting under Chapter VII of the Charter of the United Nations welcomed and supported the

Peace Agreement, authorized the establishment of IFOR, decided to establish a United Nations civilian police force envisaged in annex 11 of the Peace Agreement, and agreed to the designation of Mr. Bildt as High Representative. In its resolution 1035 (1995) of 21 December 1995, the Council decided to establish the International Police Task Force (IPTF) for the period of one year. In addition to its military tasks, IFOR has the right, as spelled out in annex 1-A, article VI, paragraph 3, of the Agreement, "to fulfil its supporting tasks, within the limits of its assigned principal tasks and available resources, and on request, which include the following: (a) to help create secure conditions for the conduct by others of other tasks associated with the peace settlement ... ."

72. In reaction to reports of alleged disturbance of the suspected mass graves in the iron mine of Ljubija, near Prijedor, on 12 January 1996 the expert, acting in accordance with the above-mentioned provisions of the Dayton Peace Agreement, requested the High Representative to take the necessary action so that IFOR, without delay, would take control of the mines and guard them against any action taken by the Bosnian Serb forces. On 15 January 1996, during a meeting, in Stockholm, of experts for the preparation of elections in Bosnia and Herzegovina, the High Representative told the expert that forwarding the expert's request to IFOR would constitute interference with the conduct of the military operations or the IFOR chain of command as defined in annex 10, article II, paragraph 9, of the Agreement. Consequently, on 16 January 1996, the expert addressed his request directly to the Commander of IFOR, Admiral Leighton Smith. He raised the matter again at the first meeting of the Human Rights Task Force on 26 January 1996 in Brussels.

73. On 23 January 1996, the IFOR Commander responded that owing to its limited mandate and military resources, IFOR was not in a position to guard suspected mass graves. However, that did not mean that IFOR was not concerned about war crimes and reports of mass graves. During his visit to Bosnia and Herzegovina in January/February 1996, the expert discussed this matter with IFOR officials. It was agreed that IFOR would provide the same assistance and cooperation to the special process as to the International Criminal Tribunal. The expert received full support and assistance from IFOR during his visit to Banja Luka and Prijedor.

V. EXCAVATION OF MASS GRAVES

74. The suspected mass graves have become an increasingly important issue from the emotional, humanitarian, legal and political points of view. Reference in that regard is made to Commission resolution 1994/31 of 4 March 1994 entitled "Human rights and forensic science".

75. Some 50 mass graves have been located in Croatia and according to various reports and sources of information, up to 300 mass graves may exist in Bosnia and Herzegovina. The pressure created by the various actions undertaken by the families of missing persons on the respective Governments and the international community to excavate mass graves and identify the mortal remains, i.e. the hunger strike of the mothers of the missing persons in Zagreb in June 1995 or the attacks on the office of the ICRC in Tuzla by family members of the missing persons from Srebrenica in January 1996, is

continuously increasing. With the strong media interest and alleged attempts of disturbance of mass graves, the unrestricted access to these sites may result in tainting evidence and therefore hampering the efforts of the war crimes investigators' efforts as well as the efforts of those searching for missing persons.

76. Consequently, mass graves have to be located, guarded and excavated without delay, in a professional, impartial and well-coordinated manner. Various authorities have a legitimate interest in excavating mass graves. In the first place, the Governments concerned have the right to investigate suspected criminal acts within their jurisdiction and may also have an interest in excavating mass graves in order to trace missing persons. In this respect, the Croatian authorities, after seizure of the former UNPAs West, North and South in 1995, identified more than 50 mass graves containing victims of the armed conflict in 1991 and have started excavation. Similarly, authorities of the Federation of Bosnia and Herzegovina started excavating mass graves in late 1995 and early 1996 near Kupres and Jajce, in territories formerly held by the Bosnian Serb forces. Moreover, the International Criminal Tribunal, in order to secure evidence of war crimes and crimes against humanity, needs to excavate mass graves; however, for this purpose it might be sufficient to open a mass grave and exhume a limited number of bodies. Following the indictment on 9 November 1995 of three commanders of the Yugoslav National Army suspected of having removed 261 persons from the Vukovar hospital and arbitrarily killing them in November 1991, the Prosecutor of the International Criminal Tribunal has a legitimate interest in excavating the mass grave in Ovcara which has been guarded for the last several years by United Nations forces. The same holds true for suspected mass graves in the region of Srebrenica and Prijedor. For the international organizations and mechanisms mandated to trace missing persons, such as the ICRC and the special process, it is necessary to exhume and identify all the mortal remains in an excavated mass grave.

77. Annex 1-A, article IX, paragraph 2, is the only provision of the Dayton Peace Agreement explicitly referring to mass graves. It establishes an obligation for each Party to permit graves registration personnel of the other Parties "to recover and evacuate the bodies of deceased military and civilian personnel of that side, including deceased prisoners". Since this provision does not include international organizations, the question that arises is whether the ICRC and the expert in charge of the special process have the right to initiate and carry out excavations of mass graves. In accordance with annex 7, article V, of the Dayton Peace Agreement, the Parties shall also cooperate fully with the ICRC "to determine the identities, whereabouts and fate of the unaccounted for". The expert's mandate is of a similar nature. The Commission on Human Rights stressed the fact that the main objective of the special process was to provide the families with information on the fate of their missing relatives.

78. Unfortunately, there are indications that the majority of some 30,000 missing persons in the territory of the former Yugoslavia might be victims of arbitrary killings and buried in mass graves. Fifteen years of experience of the Working Group on Enforced or Involuntary Disappearances show that the relatives of the missing persons constantly keep up the hope that their loved ones are alive until it has been proven beyond a reasonable doubt

that they have died. With respect to the missing persons in the former Yugoslavia, the only way of proving death would be to excavate mass graves and to exhume and identify all the mortal remains. The primary responsibility for carrying out these tasks remains with the authorities under whose jurisdiction a suspected mass grave falls. The main task of the competent international organizations and mechanisms is to try to ensure that the mass graves are excavated in a professional and impartial manner. If the authorities concerned are not willing to carry out the excavation, then the task will fall to international organizations and mechanisms, including the special process.

79. The excavation and exhumation of mass graves has to be well prepared and coordinated among the various authorities concerned, including the International Criminal Tribunal, the ICRC, the expert in charge of the special process and the local authorities. The Commission on Human Rights, in paragraph 6 of resolution 1995/35 requested the Secretary-General "to continue providing the special process with the necessary resources so that it can perform its functions continuously and expeditiously". However, the costs of excavating mass graves might go beyond the resources allocated to the special process from the United Nations regular budget. The expert, therefore, requests the Commission to consider this issue and authorize the necessary resources from the regular budget or establish a special voluntary fund. The task of coordinating the excavations with other organizations and mechanisms might be facilitated by the High Commissioner for Human Rights in cooperation with the High Representative established by the Dayton Agreement and the Transitional Administer of UNTAES. Such a coordination mechanism could be the Joint Civilian Commission (annex 10, art. II, para. 2, Dayton Agreement), the Human Rights Task Force established by the High Representative in conformity with paragraph 33 of the conclusions of the London Peace Implementation Conference of 8 and 9 December 1995, or the multilateral commission on missing persons proposed by the expert.

VI. PROPOSAL TO ESTABLISH A MULTILATERAL COMMISSION ON MISSING PERSONS

80. The main responsibility for tracing missing persons in the territory of the former Yugoslavia rests with the Governments and the local authorities which actually hold relevant information on the fate and whereabouts of the missing persons. International organizations and mechanisms such as the ICRC and the special process can only offer their services and assist the Governments and the local authorities in their tracing efforts. In fact, a number of local, regional, national and bilateral commissions have been established and have carried out important tasks such as registering tracing requests, collecting relevant data on missing persons and clarifying cases, i.e. locating and exchanging prisoners. With respect to missing persons in Bosnia and Herzegovina, the ICRC has recently established a working group of experts in compliance with annex 7, article V, of the Dayton Agreement. The Federal Republic of Yugoslavia (Serbia and Montenegro) and the Republic of Croatia on 17 November 1995 signed the Agreement on Cooperation in Tracing Missing Persons and established a joint commission.

81. Taking into account that the actual tracing results of the various bilateral commissions established hitherto were far from satisfactory, that real progress can only be achieved if all parties, including the Federal

Republic of Yugoslavia (Serbia and Montenegro), commit themselves to disclose all information on the whereabouts of the missing persons, and that the excavation of mass graves is a huge and urgent task for which a concerted effort by all parties is needed, the expert, during his recent visit to Croatia and Bosnia and Herzegovina, proposed the establishment of a high-level multilateral commission on missing persons composed of: a representative of the Republic of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, the Republika Srpska, the Republic of Croatia, the Federal Republic of Yugoslavia (Serbia and Montenegro), the High Representative (annex 10, Dayton Agreement), the Ombudsperson (annex 6, Dayton Agreement), the Transitional Administrator of UNTAES, a representative of the ICRC and the expert in charge of the special process dealing with missing persons in the territory of the former Yugoslavia. The commission would have a mandate to mediate between the parties concerned, to encourage all parties to cooperate and to disclose information on the whereabouts of the missing persons, to compile updated lists of all missing and detained persons, and to coordinate the excavation of mass graves in close consultations with the International Criminal Tribunal.

82. During his recent visit to Croatia and Bosnia and Herzegovina, the expert received full support from the representatives of the Republic of Croatia, the Republic of Bosnia and Herzegovina and the Republika Srpska in his efforts to establish such a multilateral commission. He continues negotiations with other parties. The multilateral commission shall, however, be established only if all the parties involved, including the Federal Republic of Yugoslavia (Serbia and Montenegro), commit themselves to cooperate.

VII. CONCLUSIONS and RECOMMENDATIONS

83. According to the information the special process has received, more than 27,000 persons are missing in Bosnia and Herzegovina and almost 3,000 persons in Croatia. These figures include combatants who are missing as a direct result of armed confrontations, but in most cases the disappearances allegedly occurred in the context of "ethnic cleansing" and can therefore be classified as enforced disappearances in the narrow sense of the Declaration on the Protection of All Persons from Enforced Disappearance (hereafter referred to as the Declaration). In the third preambular paragraph of resolution 47/133, in which the General Assembly proclaimed the Declaration, it defined the enforced disappearances as "in the sense that persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law".

84. The Dayton Peace Agreement and the Basic Agreement on Eastern Slavonia, together with Security Council resolutions 1031 (1995) and 1037 (1995), constitute a solid basis for achieving peace in Bosnia and Herzegovina and Croatia. A lasting peace can only be obtained on the basis of justice and respect for human rights. Since the people of Croatia and Bosnia and Herzegovina have been suffering for the last four years from the most serious

and systematic violations of human rights and humanitarian law in Europe since the Second World War, the process of reconciliation which is vital for achieving a lasting peace demands that truth be established without further delay. In particular, the relatives of some 30,000 missing persons have the right to know the truth and to be properly informed about the fate and the whereabouts of their husbands, sons and other family members unaccounted for.

85. It is to be feared that the great majority of missing persons in the territory of the former Yugoslavia have been victims of arbitrary executions or armed confrontations and are buried in more than 300 suspected mass graves in Bosnia and Herzegovina and Croatia. The search for truth, therefore, includes the urgent need to locate, guard and excavate these mass graves and to exhume and identify the mortal remains therein. The responsibility for carrying out excavations rests primarily with the Governments of the countries where the suspected mass graves are located, i.e. the Governments of the Republic of Croatia, the Republic of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and the Republika Srpska. International organizations and mechanisms dealing with the tracing of missing persons such as the ICRC and the special process have the task of monitoring the excavations to ensure that they are carried out in a professional and impartial manner. The expert is of the opinion that should the Governments concerned be unwilling or unable to carry out the excavations themselves, the mandate of the special process would also cover excavation of mass graves with the assistance of professional teams of forensic experts. Owing to the urgency of this matter, the expert requests the Commission to consider this question and to authorize the necessary financial resources.

86. The expert can only carry out his mandate with the full cooperation of all Governments and authorities concerned. In this respect, he wishes to thank the Governments of the Republic of Croatia and the Republic of Bosnia and Herzegovina for their cooperation from the beginning of the establishment of the mandate. He also expresses his appreciation to the authorities of the Republika Srpska, the Federation of Bosnia and Herzegovina and the local Serb community in Eastern Slavonia for their cooperation during his recent mission to the field. The expert requests the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) to cooperate by inviting him to visit Belgrade, providing information on the fate of the missing persons and actively participating in the proposed multilateral commission on missing persons in the territory of the former Yugoslavia. Furthermore, the expert wishes to remind the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) of its responsibility under the Declaration, under the agreement with the Republic of Croatia on cooperation in tracing missing persons and under the Dayton Peace Agreement to investigate all cases of enforced disappearances for which the Yugoslav National Army or paramilitary groups connected to it were allegedly held responsible, and to provide complete and precise information on the whereabouts of the missing persons.

87. The Government of the Republic of Croatia is requested to continue its cooperation with the special process. In particular, the expert wishes to remind that Government of its responsibility under the Declaration and under the agreement with the Federal Republic of Yugoslavia (Serbia and Montenegro) on cooperation in tracing missing persons to investigate all cases of enforced disappearance for which the Croatian Army or paramilitary groups connected to

it were allegedly held responsible, including cases which occurred during or after operations "Flash" and "Storm", and to provide complete and precise information on the whereabouts of the missing persons. Furthermore, in conformity with the Dayton Peace Agreement, the Government of Croatia is requested, through its good offices, to obtain and provide information on the cases of missing persons in Bosnia and Herzegovina for which the Bosnian Croats are allegedly held responsible.

88. The Government of the Republic of Bosnia and Herzegovina is requested to continue cooperating with the special process. In particular, the expert wishes to remind the Government of its responsibility under the Declaration and under the Dayton Peace Agreement to investigate all cases of enforced disappearances for which the Bosnian Army or paramilitary groups connected to it are allegedly held responsible, and to provide information on the whereabouts of these missing persons.

89. The authorities of the Republika Srpska are requested to continue cooperating with the special process. In particular, the expert wishes to remind those authorities of their responsibility under the Dayton Peace Agreement to guarantee him unrestricted access and to provide information on the whereabouts of all cases of disappearances for which Bosnian Serb forces are allegedly held responsible. Moreover, the expert requests the authorities of the Republika Srpska to respond to all individual tracing requests transmitted by the special process to those authorities, and to carry out the excavations of suspected mass graves in their territory, in particular in the regions of Srebrenica and Prijedor. International organizations and mechanisms dealing with the issue of missing persons, such as the ICRC and the special process, shall be properly informed and invited to monitor such excavations.

90. The authorities of the Federation of Bosnia and Herzegovina are requested to continue cooperating with the special process. In particular, the expert wishes to remind those authorities of their responsibility under the Dayton Peace Agreement to guarantee him unrestricted access and provide information on all cases of disappearances for which the Bosnian Croat forces or the Bosnian Army were allegedly held responsible. The expert requests the authorities of the Federation of Bosnia and Herzegovina to establish effective inter-ethnic tracing mechanisms within the Federation and actively participate in the proposed multilateral commission on missing persons. Furthermore, when excavations of mass graves in the territory of the Federation are carried out, international organizations and mechanisms dealing with the issue of missing persons, such as the ICRC and the special process, shall be informed and invited to monitor such excavations.

91. The ICRC, national Red Cross and Red Crescent societies, the High Representative, IFOR, OSCE, and United Nations bodies and agencies such as the UNHCR, UNTAES, United Nations Mission in Bosnia and Herzegovina (UNMIBH), and IPTF are requested to cooperate/continue cooperation with the special process. In particular, the expert requests IFOR and UNTAES to guard the suspected sites of mass graves. Furthermore, he requests the High Representative, the Ombudsperson, the Transitional Administrator of UNTAES and the ICRC to actively participate in the proposed multilateral commission on missing persons.

Annex

MAP OF THE REPUBLIC OF CROATIA AND
THE REPUBLIC OF BOSNIA AND HERZEGOVINA

The boundaries and names shown on this map do not imply official endorsement or acceptance by the United Nations.